

Exhibit B

1 As you know, Your Honor, this case, as of
2 tomorrow, ironically this case has been on file for six
3 years. It was originally filed by the People on
4 January 6th of 1999. The First Amended Complaint was
5 filed in May of '01; so nearly three years ago.

6 And the People -- the Orange County Water
7 District has known for years about the existence of
8 this lawsuit. And indeed as you know, Your Honor, the
9 Orange County Water District made a judgment to file
10 its own lawsuit in May of '03, nearly two years ago.
11 It did not seek to intervene in this lawsuit at that
12 time. It -- it did not seek to intervene in this
13 lawsuit at any time over the last two years, even
14 though it was well known by the Water District that the
15 parties were in settlement discussions.

16 They could read the Complaint. If they had
17 some issue about their interest being affected by this
18 lawsuit, they knew exactly what they could do. They
19 could have timely filed for leave to intervene.

20 I submit, Your Honor, that this is untimely and
21 should be rejected out of hand.

22 Let me make one other point, Your Honor. It's
23 interesting that Mr. Miller has not suggested to you
24 what possible relief he is seeking. Section 387 does
25 talk about the discretion that the Court has. Even if
26 this were timely, I believe that the rule talks about

1 the effect on the parties and the effect on the
2 lawsuit, the delaying the lawsuit and changing the
3 calculus for the existing parties to the lawsuit.

4 Mr. Miller hasn't said what relief he wants
5 but, by definition, he seems to be seeking to upset the
6 entire settlement.

7 As you know, Your Honor, the Orange County
8 Water District lawsuit against the Shell defendants was
9 originally in your court. And I think you know, but
10 I'll just remind you, that that case was removed to
11 Federal Court and was transferred back as part of a
12 multidistrict litigation to the Southern District of
13 New York; that the MDL, including the Orange County
14 Water District litigation, is now before Judge Shinlin
15 in the Southern District of New York.

16 I submit, Your Honor, that in addition to the
17 untimeliness problem that Mr. Miller has, if there is
18 an issue as to the effect, if any, of this settlement
19 on the Orange County Water District case, Mr. Miller
20 and his client has ample opportunity to litigate that
21 case, litigate that issue, before the proper forum; and
22 that is the Judge who has the Orange County Water
23 District case.

24 They can make whatever arguments they want
25 before Judge Shinlin, and we will make whatever
26 arguments we have before Judge Shinlin. But it is

1 entirely inappropriate, as I say, at the 12th hour, in
2 essence, for Mr. Miller to come in and, I guess, seek
3 sort of an advisory opinion from you about the effect
4 of this settlement on that lawsuit.

5 I submit, Your Honor, that what Mr. Miller is
6 trying to do at the 12th hour is to, in effect, go
7 around the back door of the MDL, to circumvent the MDL
8 proceeding, to try to avoid the fact that his lawsuit
9 is now back in the Southern District of New York, and
10 to circumvent the authority of Judge Shinlin.

11 So I join with the District Attorney's office
12 and the People and ask you to enter the settlement
13 forthwith and leave to another day for Judge Shinlin
14 the issue of what effect, if any, this settlement may
15 have on the Orange County Water District litigation.

16 **THE COURT:** The Court -- I have a question,
17 Mr. Miller. The Court has not heard a request for this
18 Court to make any findings, whether advisory or
19 otherwise.

20 What I thought I heard was a request of the
21 parties to make certain concessions, if the Court were
22 to move forward on the proposed settlement or, by
23 inference, I guess, Mr. Miller, you're suggesting that
24 that's not forthcoming, meaning a stipulation and
25 concession by the parties, some sort of continuance or
26 stay of today's proceedings.

1 consider the timeliness of the request.

2 This is a very late request. In fact, the
3 Court now has basically pen to paper with respect to
4 approving the settlement agreement.

5 And the case, *People versus Superior Court*,
6 does say that trial Court possesses its discretion to
7 deny intervention, even if direct interest is shown by
8 the purported third-party intervenor where the original
9 litigant rights or interests outweigh the intervenor's
10 concern, potential delay, multiplicity of actions,
11 which the Court sees great prejudice to these parties,
12 having worked very hard on the settlement and also
13 worked very hard of getting the case ready for trial
14 before settlement discussions were made known to this
15 Court.

16 So the Court would exercise its discretion not
17 to take any action to delay proceedings.

18 I make no findings about the effect of this
19 settlement on any other action. I'll let an
20 appropriate Court at the appropriate time make those
21 determinations.

22 The Court had earlier at a prior hearing met
23 with the parties in this action, has reviewed the
24 proposed final judgment; and but for a couple of
25 provisions which -- which I think are now corrected
26 concerning the manner in which the provisions would be